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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

MARGUERITE E. BOWEN,

Petitioner,

vs.

NEW YORK LIFE INSURANCE COMPANY, a Corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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PETITION FOR WRIT OF CERTIORARI

To the Honorable Charles Evans Hughes, Chief Justice of the Supreme Court of the United States of America, and to the Associate Justices:

The petitioner, Margaret E. Bowen, an individual, respectfully shows to this Honorable Court:

I.

STATEMENT OF MATTER INVOLVED.

This is a suit for the **double indemnity** of a life insurance policy in the amount of $10,000.00 issued by the New York Life Insurance Company to one John E. Bowen, a soliciting agent of the company. At the time of the application for the policy John E. Bowen was located at Centralia, Illinois. His former residence was Cape Girardeau, Missouri. Previous to his employment by the respondent company he had been employed at St. Louis, Missouri. The stipulated facts in this case show that at the time of his death,

February 3, 1934, John E. Bowen was a resident of St. Louis, Missouri, and had been, together with his wife, a resident of St. Louis from and after October, 1932 (R. p. 22). The semiannual premium was $196.30, including a premium of $5.20 for double indemnity and $13.50 for disability benefits (R. p. 19). There were two parts to the application. Part I was executed by the applicant and part II was the medical examination. **On April 24, 1924,** Bowen mailed, through the United States mail, from Centralia, Illinois, to the St. Louis office of the company, part I of the application, together with a letter dated April 23, 1924, referring to a trust agreement, and containing a check dated April 24, 1924, in the amount of $196.30. No cash accompanied the application.

The St. Louis office of the respondent company held the check of applicant and forwarded the application without the check. **On April 27, 1924,** the St. Louis office deposited the said check in a bank in St. Louis, in a special account known as a "Suspense Account," to await the action of the home office on the application. The application was forwarded by the St. Louis office to the New York office May 2, 1924 (R. p. 19). On May 12, 1924, the home office approved the application and sent the policy to the St. Louis office. On the same day, namely, May 12, 1924, the home office also forwarded a document to the St. Louis office, designated as a trust agreement. Both the policy and the trust agreement were received by the St. Louis office on May 14, 1924. Accompanying them was a letter from the home office dated May 12, 1924, containing instructions to the cashier of the Missouri Clearing House, which was the St. Louis office of the respondent company, with respect to the delivery of the policy. The instructions are as follows (R. p. 41):

> "The policy is not to be delivered under any circumstances unless the original and duplicate trust agree-

ments are all signed by the insured and properly witnessed. If the trusts are not executed, the policy must be returned. Duplicate trusts, after being executed, must be returned to the Comptrollers' Department.

"The Cashier is to hold the policy until the Appointment is in his hands.

"If, however, the Agency Director is satisfied that the agent in this case is reliable, and that it is necessary for him to have the policy in order to facilitate delivery, you may, upon Agency Director's approval, give the policy to the agent, with instructions that under no **circumstances may it be delivered to the applicant until the above requirement has been obtained and all the Company's other rules for the delivery of policies complied with.** (Bold-face type ours.)

"When the Cashier receives the duly executed Appointment of the Company as trustee he must immediately forward it to the Comptrollers' Dept."

About three days after the policy and trust agreements, in triplicate, were received by the St. Louis office, the St. Louis office deposited the said policy and the trust agreement, in triplicate, in the United States mails at St. Louis, addressed to John E. Bowen, at Centralia, where they were duly received by him (R. p. 20). Bowen then executed the trust agreement and mailed two signed copies to the St. Louis office, where they were received on or about May 20, 1924, and were thereupon forwarded by the St. Louis office to the respondent's home office in New York City. The other signed copy of the trust agreement was retained by Bowen with his policy (R. pp. 20-21).

In 1928 the trust agreement of May, 1924, was superseded by another trust agreement, dated January 20, 1928. This was handled through the St. Louis office in the same way, that is, the request was mailed to the St. Louis office, and, in turn, forwarded by the St. Louis office to the home office in New York, where the trust agreement was again

prepared and sent to the St. Louis office, and the St. Louis office, in turn, deposited the policy and the trust agreement of January 20, 1928, in the mail at St. Louis, Missouri, addressed to the assured at Centralia, Illinois, where it was duly received by him (R. p. 21). The assured executed the trust agreement of January 20, 1928, at Centralia, Illinois, and mailed the same, in triplicate, together with the policy, to the St. Louis office, which, in turn, sent the trust agreement and the policy to the home office, where the trust agreement was accepted and executed by the home office and thereupon the home office forwarded the trust agreement and the policy to the St. Louis office, and the St. Louis office, in turn, deposited the policy and the trust agreement in the mail at St. Louis, Missouri, addressed to the insured at Centralia, Illinois, where the same was received by him (R. p. 21).

The trust agreement provided for certain payments, which are not material to the point herein involved.

On May 21, 1924, the assured, as agent, received a commission for writing the policy on himself (R. p. 22). On the same day the premium was taken out of the suspense account and placed in the general account of the company (R. p. 22).

The receipt, which was attached to the application, was lost, and by consent the respondent attached to the statement of facts a form of application which is customarily signed by applicants. The record of the company shows that the premium **was due 4/23/24**; that it **was paid 4/26/24**, and also that the **application** was made **on 4/23** (R. p. 22); that the application was sent to the home office 5/2/24; was approved at the home office 5/9/24, and forwarded to the agent 5/17/24.

At the bottom of the application are three provisions.

The first refers to the payment of the premium in cash at the time of the signing the application, which reads as follows (R. p. 47):

> "First. If the applicant paid the soliciting agent **in cash at the time of signing the application** the full amount of the first premium for the insurance therein applied for and so duly declared in his application, and **there and then received from** him the receipt, and **not otherwise**, the Company shall be bound in accordance with the agreement which is contained in the application and printed on the reverse side of this receipt for the convenience of the applicant." (Bold face ours.)

The second provision refers to the situation when each and all of the conditions do not obtain under the first provision, and reads as follows:

> "Second. Except when each and all the conditions obtain for the insurance taking effect coincident with the signing of the application, then—
>
> "(a) If a policy be delivered on said application, the Company will accept this receipt as cash toward the payment of the first premium.
>
> "(b) If within sixty days from this date the Company fails to offer to deliver a policy to the applicant, or offers to deliver a policy upon payment of the balance of the first premium and the offer is refused, the Company will return said sum to the applicant upon demand with surrender of this receipt."

The third provision reads as follows:

> "Third. This receipt is not transferable and will not be valid for any greater sum than the sum declared by the applicant in his application to have been paid by him; nor will it be valid for any purpose if any erasure or additions have been made in the printed form."

The application also contains provisions as to when the

policy is to take effect (R. p. 29). We quote that part of the application verbatim:

> "It is mutually agreed as follows: 1. That the insurance herein applied for shall not take effect unless and until the policy is delivered to and received by the applicant and the first premiums thereon **paid in full** during his lifetime, and then only if the applicant has not consulted or been treated by any physician since his medical examination; **provided however that if the applicant, at the time of making this application pays the agent in cash** the full amount of the first premium for the insurance applied for in questions 2 and 3 and so declared in his application and receives from the agent the receipt therefor on the receipt form which is attached hereto, and if the company, after medical examination and investigation, shall be satisfied that this applicant was, at the time of making this application, insurable and entitled under the company's rules and standards to the insurance, on the plan and for the amount applied for in questions 2 and 3, at the company's public premium rate corresponding to the applicant's age, then said insurance shall take effect and be in force under and subject to the provisions of the policy applied for from and after the time this application is made, whether the policy be delivered to and received by the applicant or not. 2. That a receipt on the form attached as a coupon to this application form is the only receipt the agent is authorized to give for any payment made before the delivery of the policy. 3. That only the president, a vice-president, a second vice-president, a secretary or the treasurer of the company can make, modify or discharge contracts, or waive any of the company's rights and requirements; that notice to or knowledge of the soliciting agent or the medical examiner is not notice to or knowledge of the company, and that neither one of them is authorized to accept risks or to pass upon insurability. 4. That by receiving and accepting said policy, any additions or amendments hereto which the company may make and refer to in question 8 above

entitled 'Additions or Amendments' are hereby ratified." (Bold face ours.)

The premium check was deposited by the respondent company in the St. Louis Bank April 27, 1924, and reached the Centralia Bank on April 29, 1924.

The stipulation of facts is set out, Record pages 18 to 23, inclusive.

There was a motion for summary judgment. The trial court held that the New York law governed, and there could be no recovery because the death of the insured was suicidal and the Missouri Suicide Statute did not apply (R. pp. 52-61).

In the trial court and in the Court of Appeals the petitioner took the position that:

1. A check is not cash. It is only conditional payment.

2. The policy became effective upon delivery to the assured, or his agent (in this case the United States mail) at St. Louis.

3. The policy in question is a Missouri contract.

4. A delivery of the policy to the agent in St. Louis was a delivery to the assured.

5. The payment of the first premium in cash only applies to that part of the provision of the application where the cash is paid to the soliciting agent at the time the **application is signed.**

6. Under the first part of this provision the premium need only be paid in full and **delivery is required.**

7. The Suicide Statute (Revised Statutes of Missouri, 1929, Mo. St. Ann., Sec. 5740, p. 4385) applies to all Missouri contracts, even when made by nonresidents, if delivered and consummated in Missouri.

It reads as follows:

"In all suits upon policies of insurance on life here-

> after issued by any company doing business in this state, **to a citizen of this state,** it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void."

The Court of Appeals rendered an opinion February 11, 1941, 117 F. (2d) 298. A motion for rehearing was overruled March 11, 1941.

The said Court of Appeals found that it was not necessary to determine or pass upon the question of whether the contract was a New York contract or an Illinois contract, but reached its conclusion on the assumption that the contract of insurance was **a Missouri contract** (R. p. 72). The Court of Appeals held that the Missouri Suicide Statute is merely an inhibition against making insurance contracts with citizens thereof, whereby the insurer is relieved from liability in the event the insured commits suicide. The Court of Appeals further held that the statute denies and abridges the rights of such citizen and insurer to contract in Missouri that in case of suicide the obligation is not effective. The said Court of Appeals further held that the said Suicide Statute does not deny the citizens of states other than Missouri any privilege or immunity whatsoever, but merely restricts the freedom of its own citizens to contract in Missouri with reference to life insurance. The Court of Appeals further held that the Suicide Statute is not applicable to a policy executed in Missouri and thereafter delivered through the mails to a noncitizen of Missouri residing in Illinois. The Court further held:

> "The facts contained in the pleadings and in the stipulation do not show, at the time the policy was executed, the insured was either a citizen of the State of Missouri or within its jurisdiction. That being so,

the plaintiff failed to show that she had a cause of action against the defendant, even if the policy was executed in Missouri and the insured committed suicide while insane."

II.

The principal questions involved are:

1.

Can a **Missouri contract** be construed in one way where Missouri citizens are involved and in another way where nonresidents of Missouri or citizens of other states are involved?

2.

Is not a person within the jurisdiction of a state where his agent is there, and delivery is effected to his agent in that state?

3.

Can the Court of Appeals, under the guise of holding that the Legislature of Missouri merely inhibited citizens of Missouri from contracting with insurers against suicide, obviate or change the real facts, which are that nonresidents or citizens of other states are deprived of the benefits of the Suicide Statute under a Missouri contract, while at the same time citizens of Missouri can recover on a similar Missouri contract? Is not this ruling contrary to and in violation of Section 2, Article IV of the Constitution of the United States, providing that the citizens of each state shall be entitled to all privileges and immunities of the citizens in the several states, and further in violation of the Fourteenth Amendment to the Federal Constitution, providing that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws?

4.

Does not the Suicide Statute apply to natural persons who become Missouri citizens after the insurance contract has been consummated in Missouri?

REASONS FOR GRANTING THE WRIT.

A.

The Court of Appeals, in holding that even if the policy was executed in Missouri and the insured committed suicide while insane the Suicide Statute would not apply, has decided the question probably in conflict with the following applicable decisions of the Supreme Court, to wit:

Blake v. McClung, 172 U. S. 239, 43 L. Ed. 432;
Chambers v. B. & O. R. R. Co., 207 U. S. 142, 52 L. Ed. 143;
Travis v. Mfg. Co., 252 U. S. 60, 64 L. Ed. 460;
Paul v. Virginia, 75 U. S. 168 (8 Wall. 357);
Hague v. C. I. O., 307 U. S. 496, 83 L. Ed. 1423;
Sully v. Bank, 178 U. S. 289, 44 L. Ed. 1072;
Mo. Pac. R. R. Co. v. Clarendon etc. Co., 257 U. S. 533, 66 L. Ed. 354;
Colgate v. Harvey, 296 U. S. 404, 80 L. Ed. 299;
Chalker v. B. etc. R. Co., 249 U. S. 522, 63 L. Ed. 748.

B.

The opinion of the Court of Appeals is in conflict with the following cases of the Court of Appeals:

Berger v. Press, 89 Fed. (2d) 444 (cert. denied 302 U. S. 738, 38 L. Ed. 570);
Maynard v. Granite etc. Ass'n, 92 Fed. 435.

C.

The opinion is untenable and is in conflict with the overwhelming weight of authority.

Sheehan v. Lewis, 260 N. W. 633 (Wis.) (cases cited);

In re Johnson's Estate, 139 Calif. 532;
Kelly v. Knott, 163 So. 64, 120 Fla. 580;
Lukens v. Ins. Co., 269 Mo. 574, 191 S. W. 418;
Willis on Constitutional Law, p. 199;
Quong Ham Wah Co. v. Ind. Acc. Com., 184 Calif. 26, 192 Pac. 1021, writ of error dismissed 255 N. S. 445, 65 L. Ed. 723.

D.

The question is of great public importance. Not only does the State of Missouri have a Suicide Statute, but also the States of Utah and Colorado. This Court has held the Missouri Suicide Statute constitutional. Whitfield v. Aetna Ins. Co., 205 U. S. 489, 51 L. Ed. 895. It is inconceivable that one construction can be placed upon a Missouri contract where a resident or citizen of Missouri is involved while another construction is placed upon a similar Missouri contract where a non-citizen of Missouri or a nonresident of Missouri is involved. If the Suicide Statute of Missouri means Missouri contracts, it cannot discriminate against citizens or residents of other states in the construction and meaning of Missouri contracts. At best, the Legislature could only have contemplated that all contracts, whether Missouri contracts or not, if made with Missouri citizens shall be free from the defense of suicide. It could not affect the constitutional provisions herein referred to, namely, Article IV, Section 2, and the Fourteenth Amendment of the Constitution of the United States. It could only be in addition to the said constitutional provisions against discrimination against noncitizens and as a condition to doing business in Missouri. There is no provision in the statute that the assured must be a citizen of Missouri at the time the policy is issued. He resided in Missouri at the time of his death (R. p. 23). The **public policy** of Missouri on the question is expressed through the Suicide Statute.

Great confusion would follow in the construction of Missouri insurance policies of non-residents of Missouri if the opinion of the Court of Appeals is permitted to stand. The same would be true of Colorado and Utah contracts, and those of any other states which may hereafter adopt Suicide Statutes.

E.

The opinion contravenes Article IV, Section 2, of the Constitution of the United States and also the Fourteenth Amendment of the said Constitution.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this court directed to the United States Circuit Court of Appeals for the Eighth Circuit, demanding the said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals in the case numbered 11,855, entitled on its docket, "Marguerite E. Bowen, Appellant, v. New York Life Insurance Company, a Corporation, Appellee," to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; that the judgment herein of the said Circuit Court be reversed, and for such further relief as to the Court may seem proper.

Dated April 21st, 1941.

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BRIEF

In Support of Petition for Writ of Certiorari.

I.

The opinion of the United States Circuit Court of Appeals for the Eighth Circuit was handed down February 11, 1941, and appears in 117 Fed. (2d) 298. The motion for rehearing was overruled March 11, 1941.

II.

JURISDICTION.

1. The statutory provision which we believe sustains the jurisdiction of this Court is Judicial Code, Section 240 (a), amended February 13, 1925 (Chapter 229, Sec. 1), 43 Stat. 438; Sec. 1217 U. S. Compiled Statute Cum. Supp. 1925 (28 U. S. C. A. 347).

2. The date of the judgment to be reviewed is February 11, 1941 (motion for rehearing overruled March 11, 1941).

3. The facts showing jurisdiction have heretofore been set out under "Statement of Matter Involved."

4. The judgment of the Circuit Court of Appeals holding that recovery under the Suicide Statute does not apply to Missouri contracts unless such contracts are made with citizens of Missouri is set out Record pages 71-74, inclusive.

The following decisions sustain the jurisdiction of this Court to review the decision of the Court of Appeals:

Blake v. McClung, 172 U. S. 239, 43 L. Ed. 432;
Chambers v. B. & O. R. R. Co., 207 U. S. 142, 52 L. Ed. 143;
Travis v. Mfg. Co., 252 U S. 60, 64 L. Ed. 460;
Paul v. Virginia, 75 U. S. 168 (8 Wall. 357);
Hague v. C. I. O., 307 U. S. 496, 83 L. Ed. 1423;

Sully v. Bank, 178 U. S. 289, 44 L. Ed. 1072;
Mo. Pac. R. R. v. Clarendon etc. Co., 257 U. S. 533, 66 L. Ed. 354;
Colgate v. Harvey, 296 U. S. 404, 80 L. Ed. 299;
Chalker v. B. etc. R. Co., 249 U. S. 522, 63 L. Ed. 748;
(See also other cases cited under Reasons for Granting the Writ.)

III.

A full statement of the case has been given in the petition under the heading of "Statement of Matter Involved," which, in the interest of brevity, is hereby adopted and made a part of this brief.

IV.

SPECIFICATIONS OF ERROR.

I.

The Circuit Court of Appeals for the Eighth Circuit erred in the following particulars, to wit:

1. In holding that the Missouri Suicide Statute does not apply unless: (a) the contract was executed in Missouri, (b) with a Missouri citizen (R. p. 71).

2. In holding that the assured must be a citizen of Missouri **at the time** the policy is **issued** (R. p. 71).

3. In holding that "the only right, privilege or immunity which it denies is the right to contract that in case of suicide the contract obligation shall not be effective and this denial or abridgment extends only to the citizens of this state and insurers while contracting in this state" (R. p. 72).

4. The Court of Appeals erred in holding (R. p. 74) that Bowen, the assured, was not within the jurisdiction of Mis-

souri at the time of the delivery of the policy to his agent at St. Louis, namely, the United States mail.

5. In holding that the construction as used by the Court of Appeals does not deny to citizens of states other than Missouri any privilege or immunity whatsoever, but that it merely restricts the freedom of its own citizens to contract in Missouri with respect to life insurance (R. p. 72).

6. The Court of Appeals erred in failing to accord the rights of a Missouri citizen to the assured since he resided in Missouri at the time of his death.

SYNOPSIS OF ARGUMENT.

I.

Under the construction of the Court of Appeals, the Missouri citizenship of the applicant, in addition to the consummation of the contract in Missouri, must affirmatively appear to invoke the Suicide Statute. This is contrary to Article IV, Section 2, of the Constitution of the United States, and also is in violation of the Fourteenth Amendment to the said Constitution. It militates against the principles as announced by this Court and other courts.

II.

The statute does not provide for the consummation of contracts in Missouri, but only that the company be doing business in Missouri. It evidently contemplates any life insurance contract, if made with a Missouri citizen, but does not detract from the constitutional provisions under which Missouri contracts must be construed the same way whether the assured is a citizen of Missouri or not. It matters not whether the assured is a citizen at the time the policy is issued, or thereafter becomes a citizen. The public policy of Missouri is declared through the Suicide Statute.

ARGUMENT.

The so-called Suicide Statutes have given rise to many questions. To the best of our knowledge the only states which have suicide statutes at the present time are Missouri, Colorado and Utah. The question here under consideration in this case has undoubtedly arisen before in each of the said states, and will undoubtedly arise many times again. The precise question has not been adjudicated by this Court, but the principle involved has been announced in numerous decisions, some of which we have cited. It is our contention that the Court of Appeals has utterly failed to recognize the constitutional provision involved in Article IV, Section 2, of the Constitution of the United States, and in the Fourteenth Amendment to the said Constitution.

Article IV provides, "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

We shall not undertake to define privileges and immunities. This Court has had before it numerous cases involving the construction of the said section. The question here is: Is there included within the purview of the said section the right to have the same construction placed upon a Missouri contract by a nonresident as that afforded a citizen of Missouri, or, to put it another way, can the courts in Missouri so construe a **Missouri contract** as to mean **one** thing when a **citizen of Missouri** is a party to the contract, and **another thing** when a **non-citizen** of Missouri is a party?

We are not concerned here with a corporation as a citizen since the party involved here is a natural person. Therefore citizens of one state have the right to resort to

the courts of another state equally with the citizens of the latter state.

> Missouri Pacific R. R. Co. v. Clarendon Boat Oar Co., 257 U. S. 533, 66 L. Ed. 354;
> Sheehan v. Lewis (Wis.), 260 N. W. 633.

And so a state statute, the manifest purpose of which is to give all creditors who are citizens of the state priority over all creditors residing out of that state, whether the latter were citizens or only residents of some other states, abridges the rights given by that provision.

> Blake v. McClung, 170 U. S. 247, 43 L. Ed. 432;
> Hague v. C. I. O., 307 U. S. 496, 83 L. Ed. 1423.

Citizens of other states have the same right to sue as citizens of any state.

And by parity of reasoning, the rights which Missouri citizens have in Missouri contracts are identically the same as those which noncitizens or nonresidents of Missouri have in the same or similar Missouri contracts.

> Kelly v. Knott, 163 So. 64, 120 Fla. 580, reversed on other grounds in U. S. v. Knott, 298 U. S. 544, 80 L. Ed. 1321.

Sec. 1 of the Fourteenth Amendment to the Constitution provides as follows:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

We have already indicated that the petitioner is a natural person, therefore a citizen. We have also shown that no state can make or enforce any law which abridges the privileges or immunities of citizens of the United States. State action to which the provisions of the Fourteenth Amendment extends is not limited to legislative enactment as it comes from the hands of the Legislature, but extends to all instrumentalities and agencies employed in the execution of the law, down to the point where the personal and property rights of the citizen are touched.

National etc. R. R. Co. v. Taylor, 86 Fed. 168, modified 88 Fed. 350. Appeal dismissed 20 Sup. Ct. 1022, 44 Law. Ed. 1219.

One of the purposes of the Privileges and Immunities clause in the Fourteenth Amendment was "to bridge the gap left by Article IV so as also to safeguard citizens of the United States against any legislation of their own states having the effect of denying equality of treatment in respect of the exercise of their privileges of national citizenship in other states."

Colgate v. Harvey, cited supra.

In In re Johnson's Estate, 139 Calif. 532, in discussing Blake v. McClung, supra, the Court holds that if the privilege or immunity has been by the state conferred upon its citizens, and not in terms upon the citizens of other states, such privilege or immunity is not for that reason declared void, but the protecting arm of the Constitution is thrown around the citizens of every other state, who are thus embraced within the privilege granted. The converse of the proposition is this, that when a state has sought to impose a burden upon citizens of other states not imposed upon citizens of its own state, such effort is always held to be void.

The due process clause of said Fourteenth Amendment provides:

> "Nor shall any state deprive any person of life, liberty or property without due process of law."

Can there be due process of law where the nonresident is portioned out a different kind and type of law than the citizen of the same State under exactly the same circumstances? To ask the question is to answer it. Unjust and arbitrary discrimination cannot be due process. (See cases cited under Reasons for Granting the Writ.)

And then the last clause of the said first section provides that no state shall deny to any person within its jurisdiction the equal protection of the laws. It was this clause that the Court of Appeals in its opinion was fearful of. The Court, quoting from the case of **Lukens v. International Life Ins. Co.**, 269 Mo. 588, 191 S. W. 422, said:

> "A more interesting and difficult question would arise had this contract been executed within this state and while the insured was within the state's jurisdiction, although not one of its citizens. That part of the Federal Constitution which prohibits a state from denying to any person within its jurisdiction the equal protection of its laws would, under such circumstances, become of serious consideration."

The Court of Appeals said that the above language might give it some concern if the insured was within the jurisdiction of the State of Missouri. The Court of Appeals held that the record failed to affirmatively show that the insured was a citizen or within the jurisdiction at the time the policy was executed (R. p. 74). What is meant by the phrase "within the jurisdiction of the State of Missouri"? This is not synonomous with the phrase "within the state." The former phrase has a broader meaning and

connotes the extent of power, while the latter phrase denotes locality.

The word "jurisdiction" in the Suicide Statute is used in its broad sense. Delivery was effected in Missouri to the insured's agent.

> Words & Phrases, Vol. 45, Permanent Edition 45;
> In re Lloyds Estate, 52 Pac. (2d) 1269, 185 Wash. 161.

Furthermore, a life insurance policy is transitory in character and follows the person of the insured. Matters pertaining to the performance of a contract are to be defended under the laws of the place where performance is to be had.

> Martin v. Mut. Life Ins. Co., 190 Mo. App. 703.

CONCLUSION.

It is obvious that the Court of Appeals has misconstrued the Suicide Statute of Missouri. The decision is a very important one. Thousands of contracts of a similar nature are made yearly throughout the United States. The question, therefore, becomes a momentous one and of sufficient importance for this Court, even with its busy docket, to pass upon. If this Court in its judgment sees fit to deny this application for a writ of certiorari the Bowen decision, as announced by the Court of Appeals, stands as the law and will be pointed to as a precedent of the right of a state to so legislate that its own citizens benefit while noncitizens are excluded from participating in such benefits, although the conditions are identically the same. Not only does such a precedent affect insurance questions, but it also affects rights growing out of other contracts and affects various other rights and privileges which should be uniform

throughout these United States. The Suicide Statute is remedial and should be liberally construed.

It is to be noted that the statute does not limit its scope to policies written in Missouri, but is applicable to all policies of insurance on life issued by any company doing business in the state to a citizen of the state not necessarily a citizen at the time of the application, **but at any time.** The assured in this case, as shown by the record, lived in Missouri both before and after the time that he applied for the insurance, and obviously was sent by the company to Centralia, Illinois, to act as its agent, we think it fair to assume temporarily, but whether temporarily or permanently, under the stipulated facts in this case, he was a resident and presumably a citizen of the State of Missouri at the time of his death, and even if this Court were to hold that the Legislature of Missouri can discriminate against noncitizens, Bowen, the assured, was a citizen of Missouri at the time of his death, and since the statute in question is not limited to any particular time, he would come within the purview of its terms. However, we do not believe that this Court will ever hold that the Legislature of Missouri or of any other state has a right to so legislate as to discriminate against noncitizens of such states respectively, in the absence of special circumstances such as have been announced by this Court. Among such cases are those authorizing courts to require nonresidents to deposit costs, etc. The present case has no special circumstances taking it out of the general rule, we contend for.

The record in the case at bar was heard upon a stipulation of facts, and the pleadings. We believe that the decision of the Court of Appeals is in conflict with the decisions that we have heretofore adverted to, and the opinion of the said Court militates against the principles announced by this Court as set out above, and is directly

violative of the above-mentioned constitutional provisions and the Public Policy of the United States as enunciated by its laws.

We earnestly urge upon the Court to grant the writ of certiorari and settle the question, and to reverse the decision of the Court of Appeals.

Respectfully submitted,

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